

Choosing a Trustee

Choosing the trustee for your trust is one of the most important decisions you will make. Covenant Trust Company® provides professional trustee services and asset management, and is an excellent choice to serve as trustee of your revocable or irrevocable trust, or IRA account.

The basic choice is whether to choose a corporate or an individual trustee. We believe that in almost all cases, the corporate trustee is a better long-term choice. Occasionally, some individuals choose to serve as trustee initially, naming Covenant Trust Company as successor trustee. There are significant responsibilities in being a trustee; and providing quality trustee service requires expertise and knowledge that individuals may not always possess. The consequences of inadequate or incompetent trustee services can be significant, both to you and to the trustee. The following information should be helpful to you in making this important decision.

Why Should I Choose a Corporate Trustee?

Attribute	Corporate Trustee	Individual Trustee
<ul style="list-style-type: none"> ➤ Trustee experience ➤ Trust knowledge 	An experienced fiduciary is more likely to appreciate the broad and complex multiplicity of laws involved and know who to call on for assistance if needed; thereby avoiding many mistakes and more efficiently administering and executing the terms of the trust.	
	<ul style="list-style-type: none"> ➤ Collective years of staff experience ➤ This is all they do—they know how to do it ➤ Familiar with all types of trusts ➤ Familiar with tax issues ➤ Understands estate planning ➤ Understands legal responsibilities 	<ul style="list-style-type: none"> ➤ Often has no experience in being a trustee ➤ May not have financial or tax experience ➤ May not understand trusts and how they work ➤ May not have experience in asset management or investments
<ul style="list-style-type: none"> ➤ Decision-making ability ➤ Legal Capacity 	The trustee must be able to make many decisions, some of great significance, over an extended period of time. This requires both emotional maturity and wisdom as well as practical knowledge and experience. Also, a trustee must have what is known as legal capacity.	
	<ul style="list-style-type: none"> ➤ Accustomed to making decisions as trustee ➤ Has experience and resources needed ➤ Legal capacity is not an issue 	<ul style="list-style-type: none"> ➤ May not feel comfortable making big decisions ➤ May not know where to get help ➤ Minor children may not be appointed ➤ Legally incapacitated adults may not serve as trustee ➤ What if you choose someone who later becomes incapacitated?
<ul style="list-style-type: none"> ➤ Availability ➤ Stability ➤ Continuity ➤ Longevity 	Trusts often last for years, even generations. A trustee must be willing—and have the resources—to serve throughout the term of the trust, maintaining a consistent level of interest and continuity required to manage the trust effectively. The two important issues are permanency and proximity. Can the trustee serve effectively for a long period of time, and does the trustee have representatives in the area? Will the trust management continue seamlessly even if something happens to you?	
	<ul style="list-style-type: none"> ➤ Corporate trustees are more likely to continue to serve for the duration of the trust ➤ No illness, divorce, vacations, death or distractions ➤ Always someone available to talk to 	<ul style="list-style-type: none"> ➤ Individuals may lose interest, move away, become incapacitated or die before the trust is finally distributed ➤ Inability to manage personal finances, family circumstances, social problems [gambling, alcoholism, etc.] can occur
<ul style="list-style-type: none"> ➤ Integrity 	Honesty and loyalty are the watchwords of trusts. Vast sums of money and other assets are entrusted to fiduciaries who must exercise a high degree of care over trust property, and act consistently on behalf of trust beneficiaries. You must have total confidence in the integrity of your chosen trustee!	
	<ul style="list-style-type: none"> ➤ Checks and balances in place 	<ul style="list-style-type: none"> ➤ May be subject to pressure and/or temptation under adverse circumstances

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<ul style="list-style-type: none"> ➤ Peace of Mind 	<p>Peace of mind is one of the primary reasons for establishing a trust. Knowing that your wishes will be carried out, that the trust will continue to take care of things, and that you have relieved your spouse or family members of the burden of management is an important consideration.</p>	
	<ul style="list-style-type: none"> ➤ You can rely on their experience and integrity ➤ You know your wishes will be carried out. ➤ Relieves family members of responsibility 	<ul style="list-style-type: none"> ➤ Circumstances may change ➤ May decide they don't want to do it ➤ May move far away ➤ May not be capable of doing what's needed
<ul style="list-style-type: none"> ➤ Impartiality ➤ Objectivity 	<p>A trustee is legally bound to treat all parties equally and fairly. The trust document must always be the governing authority in administering the terms of the trust. The trustee should never have a conflict of interest—for example, being both trustee and beneficiary of the trust.</p>	
	<ul style="list-style-type: none"> ➤ Governed by provisions of the trust document, not by emotions or feelings ➤ Treats all beneficiaries impartially, can't be pressured or coerced like an individual could 	<ul style="list-style-type: none"> ➤ Naming one child or family member as trustee over another can cause hard feelings ➤ Other family members or beneficiaries can exert pressure or coercion ➤ May not be comfortable confronting others or making difficult decisions ➤ May find it hard to act impartially, especially if he/she is also a beneficiary
<ul style="list-style-type: none"> ➤ Asset Management Experience ➤ Investment Expertise 	<p>A trustee should have a high degree of investment sophistication and experience, a specific investment policy, and a proven track record in asset management. Choose a trustee with a disciplined investment approach.</p>	
	<ul style="list-style-type: none"> ➤ Experience with all asset types ➤ Give full attention to asset management ➤ Potential for better performance ➤ Wider array of investment choices ➤ Customized strategy for each account, based on grantor's instructions 	<ul style="list-style-type: none"> ➤ May have little or no experience in investing or managing assets for someone else ➤ May not be interested in investments ➤ May demonstrated inability to manage personal finances
<ul style="list-style-type: none"> ➤ Security ➤ Regulation ➤ Accountability 	<p>A trustee must use the same degree of care and skill that a person of ordinary prudence would exercise in dealing with his/her own property. The security of the funds entrusted to the trustee and the depth of the trustee's pockets in the event of litigation by beneficiaries is an important concern.</p>	
	<ul style="list-style-type: none"> ➤ Banks and trust companies are regularly audited both internally and externally ➤ Trust assets must be kept separate from other assets and cannot be loaned out, mixed with the trustee's corporate assets of used to satisfy its creditors ➤ Required to have appropriate insurance as protection against fraud and negligence ➤ Active risk management procedures ➤ Regulated by state or federal agencies ➤ Must have regular audits 	<ul style="list-style-type: none"> ➤ No regulation ➤ Little or no oversight ➤ Limited accountability ➤ Accountability is not formalized—no checks and balances ➤ May be vulnerable to trustee's creditors ➤ Assets managed by individuals have no protection against fraud ➤ May not be adequately protected against trustee liability for errors/omissions <p>Little or no risk analysis or management</p>
<ul style="list-style-type: none"> ➤ Legal Impact 	<p>A trust may be declared invalid if state law trust requirements are not met. All benefits of the trust are lost if it is invalidated. [For instance, a trust is invalid if no assets are held in the name of the trust.] Also, the trustee must fully understand everything contained in the trust document.</p>	
	<ul style="list-style-type: none"> ➤ Is familiar with state requirements for having a valid trust ➤ Follows through with all necessary steps of trust administration ➤ Understands trustee powers as granted in the document ➤ Understands fiduciary duties, responsibilities, and liability 	<ul style="list-style-type: none"> ➤ May be unaware of certain state trust requirements ➤ May unwittingly cause problems with trust validity ➤ May be unaware of trustee responsibilities and liability
<ul style="list-style-type: none"> ➤ Record-keeping ➤ Reporting 	<p>A trust is a long-term arrangement under which accountings must be made periodically over many years to a number of parties that may include the grantor, the beneficiaries, the appropriate federal and state taxing authorities and a supervising court. This requires regular statements of the receipts, disbursements and assets of the trust in an intelligible form, and careful long-term record</p>	

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	storage.							
	<ul style="list-style-type: none"> ➤ Has systems in place for trust accounting ➤ Has storage capacity ➤ Understands record-retention requirements ➤ Familiar with reporting requirements 	<ul style="list-style-type: none"> ➤ Lack of trust accounting knowledge ➤ May destroy records too soon due to lack of space or ignorance ➤ May be unaware of trust reporting requirement 						
<ul style="list-style-type: none"> ➤ Accounting ➤ Tax Planning 	The trustee must have a working knowledge of the accounting laws and both federal and state tax laws involving income, estate, gift and generation-skipping tax.							
	<ul style="list-style-type: none"> ➤ Familiarity with all these issues because of experience in trust administration ➤ Audits, examinations and reference library provide up to date information 	<ul style="list-style-type: none"> ➤ May not understand complex tax laws ➤ May not know where to get reliable help ➤ Potential tax liability if not handled correctly 						
<ul style="list-style-type: none"> ➤ Tax Impact 	If one of the reasons for establishing a trust is to save taxes, the expertise of the trustee in tax matters becomes even more significant. The potential for adverse tax consequences increases when the trustee is given discretionary powers over the income or principal of the trust.							
	<ul style="list-style-type: none"> ➤ Understands tax laws as they apply to trusts ➤ Makes sure all assets are handled in a tax-appropriate manner ➤ Understands proper use of discretionary trustee powers 	<ul style="list-style-type: none"> ➤ May have no experience or knowledge of complex tax law requirements ➤ Tax consequences can result from improper trustee selection 						
<ul style="list-style-type: none"> ➤ Flexibility 	A trustee must be able to adapt to changing circumstances. It is inevitable that tax laws will change; the circumstances of beneficiaries can also change significantly. As a trust is a mechanism specifically designed to meet those changes, the trustee must be willing and able to change as well.							
	<ul style="list-style-type: none"> ➤ Maintains current information on tax laws applying to trusts. ➤ Maintains regular contact with trust beneficiaries. 	<ul style="list-style-type: none"> ➤ May be unaware of changes in tax laws or other requirements. ➤ May not have regular contact with all beneficiaries. 						
<ul style="list-style-type: none"> ➤ Business Experience 	If one or more businesses are held in the trust, it is extremely important that the trustee have expertise in running that type of business. Even if the trustee sells the business, knowing when and how best to dispose of it is a very important skill.							
	<ul style="list-style-type: none"> ➤ Has a network of available and proven resources to call on 	<ul style="list-style-type: none"> ➤ May not know where to turn or how to make sure advice is reliable 						
<ul style="list-style-type: none"> ➤ Resources 	Trust administration requires expertise in many different areas.							
	<ul style="list-style-type: none"> ➤ A whole team of professionals readily available ➤ Access to industry experts across a wide spectrum 	<ul style="list-style-type: none"> ➤ Limited resources and support ➤ Limited knowledge of where to get help ➤ May be reluctant to use outside resources 						
<ul style="list-style-type: none"> ➤ Cost 	A trustee is entitled to a reasonable fee. All fees and expenses generated by the trustee must be paid from trust assets, thereby reducing funds available for distribution to beneficiaries. Some oversight of fees and expenses should be exercised.							
	<ul style="list-style-type: none"> ➤ Usually charges a fee, based on a published schedule ➤ Has most resources available on staff ➤ Covenant Trust Company charges no trustee fee during lifetime, providing 25% of the trust remainder is designated for one or more Covenant ministries of the grantor's choice. If there are grantors under age 65, Covenant Trust Company may charge a fee based on the value of the assets managed: <table border="0" style="margin-left: 20px;"> <tr> <td>First \$300,000</td> <td>0.80% annually</td> </tr> <tr> <td>Next \$700,000</td> <td>0.60% annually</td> </tr> <tr> <td>Over \$1 million</td> <td>0.35% annually</td> </tr> </table> 	First \$300,000	0.80% annually	Next \$700,000	0.60% annually	Over \$1 million	0.35% annually	<ul style="list-style-type: none"> ➤ Is entitled to trustee fee and expense reimbursement, but there is little oversight of what fees may be charged ➤ Increased costs from having to hire lawyers, accountants, tax advisors, etc. to perform routine trustee responsibilities
First \$300,000	0.80% annually							
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Fiduciary Duties and Liabilities

The trustee has specific duties:

- Take possession of and maintain control of fiduciary [trust] assets
- Collect amounts due and pay expenses
- Keep fiduciary assets separate and distinct from all other assets
- Maintain clear and accurate accounts and records; provide regular accounting of actions as trustee
- Exercise the same care and skill in administering the trust as a person of ordinary prudence would exercise in dealing with his/her own personal property
- Administer the trust solely in the interest of the beneficiary(ies), thus preventing the trustee from doing anything where the his/her/its own interests conflict with those of the trust
- Valuation of assets for tax purposes, insurance, sale, disposition, performance measurement and capital gain reporting
- Payment of estate, inheritance and income taxes
 - Make all payments in a timely manner to avoid penalties and punitive interest charges
 - Review of estate tax return
 - Supervision of audit to substantiate values and deductions claimed
 - Preparation and filing of all fiduciary income tax returns
- Investment of trust/estate portfolio
 - Investment expertise is an important advantage
 - Assets managed according to terms of the document
 - Consider potential tax impact of investments
 - Review investment decisions as economic outlook and beneficiary(ies)' circumstances change
 - Custody of assets
- Administer the trust in adherence to the provisions of the trust document

There are also significant liabilities inherent in serving as a trustee. The trustee may be held liable for:

- Violation of any applicable law
- Non-compliance with the terms of the trust or any applicable court orders
- Failure to properly discharge any of its duties or responsibilities
- Abuses of any trustee powers

The most common sources of fiduciary liability usually stem from:

- Imprudent management of account investments [e.g. poor investment decisions]
- Failure to manage cash appropriately
- Engaging in self-dealing or other conflicts of interest
- Failure to properly manage real property [e.g. failing to have proper insurance, to pay taxes, etc.]
- Mismanagement of trust accounts or funds [e.g. making improper or unauthorized distributions]
- Improper delegation of duties [e.g. no oversight of investment manager, or property manager]
- Taking actions without approval of beneficiaries, co-fiduciaries, or a court with jurisdiction

Corporate trustees are subject to various laws, regulations, standards and guidelines, which include:

- The provisions of the trust document
- Accepted fiduciary standards, a body of general principles adopted by state courts over the years
- State and federal statutory law and regulation
- Rules, regulations and policies of the trustee's own institution, state or federal regulatory agency
- Internal control, risk management and checks and balances
- External audits and regulatory examinations